

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 112/2017**

% **29th May, 2017**

SUDAMA DEVI & ANR. Appellants

Through: Mr. N.K.Gupta, Adv.

versus

UNION OF INDIA Respondent

Through: Mr. Jagjit Singh, Sr. Adv. with
Mr. Preet Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 8647/2017 (delay of 30 days in filing the appeal)

For the reasons stated in the application, delay of 30 days in filing the appeal is condoned.

CM stands disposed of.

FAO No. 112/2017

1. This first appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is filed impugning the judgment of the Railway Claims Tribunal dated 18.10.2016 dismissing the claim petition filed by the appellants/applicants.

2. The facts of the case as pleaded by the appellants are that the deceased Manoj Kumar, who was the son and brother of the appellants/applicants, was travelling from New Delhi to Shakurbasti by EMU Train No.64013 on 10.5.2014. It is pleaded that the deceased had purchased a ticket and he was standing at the gate of the compartment and he fell down near Punjabi Bagh flyover due to jerk and jostling of the passengers. The deceased was declared brought dead to the hospital where he was brought by a PCR van.

3. The only issue which is called for decision in this case is as to whether the deceased was a *bonafide* passenger i.e whether the deceased had purchased a train ticket for travel from New Delhi to Shakurbasti. In this regard the Railway Claims Tribunal has held that the deceased was not a *bonafide* passenger because no train ticket was recovered from the person of the deceased although various other documents were recovered being the identity card, PAN Card, Voter I.D Card, Driving Licence, ATM Card, etc. The relevant paras of the judgment of the Railway Claims Tribunal on this issue of the deceased being or not a *bonafide* passenger, i.e whether he had purchased a train ticket, are paras 1 and 2 and which read as under:-

“1. On the issue of whether the deceased was a passenger, admittedly no ticket was recovered but it was contended that he had purchased a ticket for a local train for travel from Palwal to Shakurbasti. The contention was that the ticket must have been lost.

2. There could be several circumstances where the loss of the ticket could be established from the circumstances. While possession of ticket is a positive fact, loss of ticket is negative evidence that can be brought from only circumstances. The attempt of the applicants was that the deceased had informed them by telephone that he had purchased a ticket and that he was going to Shakurbasti. We find this to be wholly artificial for a daily commuter to part with the information with his mother that he had just purchased the ticket and boarded the train. The circumstance which we hold against the applicants is that in the Report given by the Police, a reference is made to the fact that they have recovered the Identity Card, PAN Card, Voter I.D.Card, Driving license, ATM Card, two photographs and a slip with a mobile number. It was not as if the body had been found with the things scattered and the ticket could have been lost. It was not again an incident of a death in the dark hours of the night and the body lying for a long period when there could have been tempering with any of the personal possessions of the deceased. If it was not a lonely place, there was not even a chance of tempering with anything. As much as we would like to stretch the situation to accommodate that the deceased was a passenger so long as there is a legal requirement under Section 2(29) of the Railways Act that a passenger must be a person with a valid ticket or pass, we ought to be looking either for the ticket or proper explanation for loss of a ticket. The first situation does not exist and the second situation does not present itself with the circumstances that could normally exist. If every item that should be found on a person along with his belongings could be identified and recovered, a ticket which ought to have been normally in the same place where all the personal effects were clinging on to body alone was nussubg, it is difficult for us to accept that he was a bonafide passenger in the manner required to be proved. Evidently, there was no one who actually saw him purchasing a ticket. If he was working in a responsible establishment as it is made out to be and that he was a regular commuter, at least one would expect what is probable in such a situation of a person having a Monthly Season Ticket. We have no means of even assessing that he was a regular commuter between the same destinations. If he was working as a foreman in a prominent Public Limited Company, evidence of destination as a place of his work where he used to commute everyday would have also been helpful. We do not have such cogent information to help us determine that he was a passenger. We hold the issue against the applicants." (underlining added)

4. No doubt, as argued on behalf of the appellants/applicants, it is not necessary that in every case a train ticket must be recovered before it is held that the deceased was a *bonafide* passenger, however, every case depends upon the facts of each case as to whether or not it should be held in favour of the deceased that he had purchased a

railway ticket. In the present case, there is no evidence of any eye witnesses of the deceased having purchased a train ticket and it is also seen that various articles were recovered from the person of the deceased, but no train ticket was recovered. Also, I do not find it illogical for the Railway Claims Tribunal to observe that if the deceased was a regular passenger then he ought to have a monthly pass and hence there would be no question of purchasing a daily train ticket. Though learned counsel for the appellants argued that the deceased did not regularly travel by train, however not only there is anything to substantiate this aspect, the fact of the matter is also that if deceased used to undertake train journey then there is no reason why for the train journeys regularly undertaken for going to his office/official work a monthly pass which is most convenient as also cheap was not purchased.

5. If a dead body is found without a train ticket then this would not mean that this Court or the Railway Claims Tribunal has to hold in all cases that the deceased had purchased a train ticket. In the facts of the present case there is no illegality committed by the Railway Claims Tribunal in holding that the deceased was not a *bonafide* passenger inasmuch as no train ticket was recovered from the person of

the deceased as also from the articles found with the deceased at the time of recovery of the body.

6. Dismissed.

MAY 29, 2017/ib

VALMIKI J. MEHTA, J

